

REMARKS

Claims 1, 3-4, 6-13, 15-17, 19-20, 22, 24-25, 27, 29-30 and 32-34 are pending in the Application. Claims 1, 3-4, 6-13, 15-17, 19-20, 22, 24-25, 27, 29-30 and 32-34 stand rejected. Claim 13 is rejected under 35 U.S.C. § 112, second paragraph. Claims 1, 3-4, 6-13, 15-17, 19-20, 22, 24-25, 27, 29-30 and 32-34 are rejected under 35 U.S.C. § 103. Applicants cancel claims 1, 3-4, 6-13, 15-17, 19-20, 22, 24-25, 27, 29-30 and 32-34 without prejudice or disclaimer. Applicants added claims 35-68 and therefore claims 35-68 are pending.

I. REJECTIONS UNDER 35 U.S.C. § 112:

The Examiner rejects claim 13 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Paper No. 5, page 2. Specifically the Examiner rejects claim 13 for reciting the limitation "the second protocol means" which lacks sufficient antecedent basis. Paper No. 5, page 2. Claim 47 which corresponds to claim 13 uses the phrase "a second protocol means" instead of the phrase "the second protocol means." Accordingly, Applicants respectfully assert that claim 13 is allowable.

II. REJECTIONS UNDER 35 U.S.C. § 103(a):

Claims 1, 3, 4, 6-13, 15-17, 19-20, 22, 24-25, 27, 29-30 and 32-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Annaamalai et al. (U.S. Patent No. 6,445,715) (hereinafter "Annaamalai") in view of Hartmann et al. (U.S. Patent No. 6,516,355) (hereinafter "Hartmann"). Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

**A. Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest the following limitations.**

Applicants respectfully assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "a switch fabric system having circuitry operable to attach to the CPU" as recited in claim 35 and similarly in claims 43, 51, 56, and 61. The Examiner cites parsing engine 303 of Annaamalai as teaching the above-cited claim limitation. Paper No. 3, page 3. Applicants respectfully traverse and assert that Annaamalai instead teaches parsing engine 303 that receives the results from the result bus and drives aggregate information to a switching bus 310. Column 6, lines 23-26. Annaamalai further teaches that parsing engine 303 may further extract pertinent information from the frames/packets traversing the switching bus. Column 6, lines 26-29. This is not the same as a switch fabric configured to control the queuing and scheduling functions of a switch. Specification, page 6, lines 2-3. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "a switch device driver operable to execute on the CPU" as recited in claim 35 and similarly in claims 43, 51, 56, and 61. The Examiner cites forwarding database 330 of Annaamalai as teaching the above-cited claim limitation. Paper No. 3, page 3. Applicants respectfully traverse and assert that Annaamalai instead teaches a layer 2 forwarding engine 330 configured to access and process information stored in forwarding database 332. Column 6, lines 16-19. This is not the same as the switch device driver which is not limited to driving layer 2 information. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner has relied upon an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "wherein the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric" as recited in claim 35 and similarly in claims 43, 51, 56, and 61. For at least the reasons stated above, Annaamalai and Hartmann do not teach or suggest a switch fabric and a switch device driver. Hence, Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest an FDDL system operable to communicate with a switch device driver. Further, Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest a switch device driver operable to communicate with the switch fabric. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Claims 36-42, 44-50, 52-55, 57-60 and 62-68 recite combinations of features including the above combinations, and thus are patentable for at least the above reasons as well. Claims 36-42, 44-50, 52-55, 57-60 and 62-68 recite additional features, which, in combination with the features of the claims upon which they depend, are patentable over Annaamalai in view of Hartmann.

For example, Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "wherein the FDDL system defines an FDDL API for communication with the software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 37, and similarly in claim 41, 45, 49, 53, 58, 63 and 67. The Examiner cites column 7, lines 13-67 of Annaamalai as teaching the above-cited claim limitation. Paper No. 3, page 5. Applicants respectfully traverse and assert that Annaamalai instead teaches a DTP protocol that enables dynamic negotiation of trunk encapsulation types between local and neighbor ports interconnecting switches in a computer network. This language is not the same as an FDDL system that defines an FDDL API for

communication for a software application. Further, this language is not the same as an FDDL system that defines a Switch Services API for communication with a switch device driver. In fact, the passage cited by the Examiner does not even mention forwarding database 332 which the Examiner had previously indicated as teaching an FDDL system. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 38 and similarly in claims 46, 54, 59 and 64. The Examiner cites column 7, lines 13-67 and column 5, lines 53-60 of Annaamalai as teaching the above-cited claim limitation. Paper No. 3, page 5. For at least the reasons stated above, Applicants respectfully assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest an FDDL system that defines an FDDL API for communication with a first and a second software application. For at least the reasons stated above, Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest an FDDL system that defines a switch services API for communication with the switch device driver. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon on an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "wherein the FDDL system comprises: a base FDDL system; a software application tower FDDL system; and a second software application tower FDDL system" as recited in claim 39 and similarly in claims 42, 47, 50, 55, 60, 65 and 68. The Examiner cites logical management device 120 of Hartmann as teaching a base FDDL system and element 100 of Hartmann as teaching

an FDDL system. Paper No. 3, page 4. Applicants respectfully traverse and assert that Hartmann instead teaches that element 100 corresponds to a switching engine with the ability to read from and write to persistent configuration files which are particular to a given switch and which contains configuration and maintenance functions. Column 5, lines 1-10. A switching engine is not the same as an FDDL which defines a set of APIs designed to enable protocol forwarding functions to be distributed in the manner that is simple, efficient and deportable. Specification, page 7, lines 1-3. Further, logical device management 120 of Hartmann provides the logic necessary to manage per-device information. Column 5, lines 33-34. This is not the same as a base FDDL system which may be used to translate a command. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon on an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "wherein the base FDDL communicates with the switch device driver; the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system" as recited in claim 39 and similarly in claims 42, 47, 50, 55, 60, 65 and 68. The Examiner cites a call controlled transaction manager 116 of Hartmann as teaching a base FDDL system communicating with a switch device driver. Paper No. 3, page 4. The Examiner further cites logical device management 120 of Hartmann as teaching a base FDDL system that communicates with an object server interface translator 124 representing a software application and a media API translator 112 as representing a second software application tower FDDL system. Paper No. 3, page 4. The Examiner has not cited a particular element in switching engine 100 of Hartmann as teaching a switch device driver. Hence, Hartmann does not teach a base FDDL system communicating with a switch device

driver. Further, the Examiner cites an object server interface translator 124 of Hartmann as teaching both a software application and a software application tower FDDL system. As recited in the above-cited claim limitation, a software application and a software application tower FDDL system are two separate elements. Hence, Hartmann does not teach a software application communicating with a software application tower FDDL system. Similarly, the Examiner cites a media IPA translator 112 of Hartmann as teaching both a second software application and a second software application tower FDDL system. A second software and a second software application tower FDDL system are two separate elements. Thus, Hartmann does not teach a second software application that communicates with a second software application tower FDDL system. Further, as stated above, logical device management 120 of Hartmann is not the same as a base FDDL system. Hence, Hartmann does not teach a base FDDL system that communicates with a software application tower FDDL system and a second software application tower FDDL system. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that Annaamalai and Hartmann, taken singly or in combination, do not teach or suggest "an independent software application shim operable to execute on the CPU, wherein the independent software application communicates with the independent software application shim and the independent software application shim communicates with the switch device driver" as recited in claim 40 and similarly in claims 48 and 66. The Examiner cites native switch translation 110, 112, 114, 124 of Hartmann as teaching a shim application. Paper No. 5, page 5. Applicants respectfully traverse and assert that Hartmann instead teaches a connection API translator 110, a media API translator 112, an in-band signaling API translator for communicating with call control 104. Column 5, lines 12-40. Hartmann further teaches an object server interface translator 124 which provides the logic necessary to convert object server API messages from the man-machine

interface into native switch operation, administration and maintenance messages and to convert native operation, administration and maintenance messages into object server API messages. Column 5, lines 41-65. These are not shim applications. A shim application may refer to a software component that interfaces between two other software components. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

As a result of the foregoing, Applicants respectfully assert that there are numerous claim limitations not taught or suggested in the cited prior art, and thus the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 35-68 in view of the cited prior art.

**B. The Examiner has not provided any objective evidence for combining Annaamalai with Hartmann.**

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular. *In re Lee*, 277 F. 3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F. 3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

In order to reject under 35 U.S.C. § 103, therefore, the Examiner must provide a proper motivation for combining or modifying the references. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1457-1458 (Fed. Cir. 1998); M.P.E.P. § 2142. The Examiner's motivation for modifying Annaamalai with Hartmann to include an FDDL system that comprises a base FDDL system and a plurality of software application towers, as

recited in claims 35, 47, 51, 56 and 61, is "in order to control a number of switches having different message protocols thus providing improved network adaptability." Paper No. 3, page 4. This motivation is insufficient to support a *prima facie* case of obviousness since it is merely the Examiner's subjective opinion.

Annaamalai teaches a dynamic trunk protocol that enables dynamic negotiation of trunk encapsulation types between ports connecting intermediate stations in a computer network. Abstract.

Hartmann, on the other hand, teaches a single API that can be used to control a number of switches having different message protocols. Column 3, lines 35-39.

The Examiner must submit objective evidence and not rely on his own subjective opinion in support of combining a reference that teaches a dynamic trunk protocol that enables dynamic negotiation of trunk encapsulation types between ports connecting intermediate stations in a computer network with a reference that teaches a single API that can be used to control a number of switches having different message protocols. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Annaamalai to have an FDDL system that comprises a base FDDL system and a plurality of software application tower FDDL systems. *Id.* Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Annaamalai to control a number of switches having different message protocols thus providing improved network adaptability. *Id.* Therefore, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 34-68.



III. CONCLUSION

As a result of the foregoing, it is asserted by Applicants that claims 35-68 in the Application are in condition for allowance, and Applicants respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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